THE LOBBY NETWORK:

BIG TECH'S WEB OF INFLUENCE IN THE EU

CEO

LOBBY CONTROL

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As Big Tech's market power has grown, so has its political clout. Just as the EU tries to rein in the most problematic aspects of Big Tech – from disinformation, targeted advertising to excessive market power – the digital giants are lobbying hard to shape new regulations. They are being given disproportionate access to policy-makers and their message is amplified by a wide network of think tanks and other third parties. Corporate Europe Observatory and LobbyControl profile Big Tech's lobby firepower, given it is now the EU's biggest lobby spending industry.

1.

The lobby firepower of Big Tech undermines democracy

In the last two decades we have seen the rise of companies providing digital services. Big Tech firms have become all-pervasive, playing critical roles in our social interactions, in the way we access information, and in the way we consume. These firms not only strive to be dominant players in one market, but with their giant monopoly power and domination of online ecosystems, want to become the market itself.

In her announcement[1] of plans to shape the EU's digital future, President of the European Commission von der Leyen declared: "I want that digital Europe reflects the best of Europe – open, fair, diverse, democratic, and confident."

The current situation is quite the opposite. Tech firms like Google, Facebook, Amazon, Apple and Microsoft long ago consolidated[2] their hold of their market, and dominated top spots in the world's biggest companies.

A mere handful of companies determine the rules of online interaction and increasingly shape the way we live. The COVID-19 pandemic has only sped up the momentum for digitisation and the importance of the companies. Big Tech's business model has received heavy criticism for its role in the spread of disinformation and the undermining of democratic processes its reliance on the exploitation of personal data, and its immense market power and unfair market practices.

A handful of tech companies dominate the sector and determine the rules of online interaction, shaping the way we live. They are gaining not just economic power, but political power.

Meanwhile as the economic power of big digital companies has grown, so has their political power.

In this report, we offer an overview of the tech industry's lobbying firepower with regard to the EU institutions, including who the big spenders are, what they want, and just how outsized their privileged access is. This is especially important given that EU policy-makers are currently seeking to regulate the digital market and its players via the Digital Services Act pack-

1 https://ec.europa.eu/commission/presscorner/detail/en/ip_20_273

2 https://www.forbes.com/lists/global2000/#5ed0fcaf5ac0

age. This EU initiative is made up of two components, the Digital Services Act and the Digital Markets Act, meant to "to create a safer digital space in which the fundamental rights of all users of digital services are protected", and "to establish a level playing field to foster innovation, growth, and competitiveness, both in the European Single Market and globally"[3].

We map for the first time the 'universe' of actors lobbying the EU's digital economy, from Silicon Valley giants to Shenzhen's contenders; from firms created online to those making the infrastructure that keeps the internet running; tech giants and newcomers.

We found a wide yet deeply imbalanced 'universe':

- with 612 companies, groups and business associations lobbying the EU's digital economy policies. Together, they spend over €97 million annually lobbying the EU institutions. This makes tech the biggest lobby sector in the EU by spending, ahead of pharma, fossil fuels, finance, or chemicals.
- in spite of the varied number of players, this universe is dominated by a handful of firms. Just ten companies are responsible for almost a third of the total tech lobby spend: Vodafone (€1,750,000), IBM (€ 1.750.000), QUALCOMM (€ 1.750.000), Intel (€1,750,000), Amazon (€2,750,000), Huawei (€3,000,000), Apple (€3,500,000), Microsoft (€ 5,250,000), Facebook (€ 5,550,000) and with the highest budget, Google (€5,750,000).
- out of all the companies lobbying the EU on digital policy, 20 per cent are US based, though this number is likely even higher. Less than 1 per cent have head offices in China or Hong Kong. This implies Chinese firms have so far not invested in EU lobbying quite as heavily as their US counterparts.
- These huge lobbying budgets have a significant impact on EU policy-makers, who find digital lobbyists knocking on their door on a regular basis. More than 140 lobbyists work for the largest ten digital firms day to day in Brussels and spend more than €32 million on making their voice heard.
- Big Tech companies don't just lobby on their own behalf; they also employ an extensive network of lobby groups, consultancies, and law firms representing their interests, not to mention a large number of think tanks and other groups financed by them. The business associations lobbying on behalf of Big Tech alone have a lobbying budget that far surpasses that of the bottom 75 per cent of the companies in the digital industry.

Academic and Big Tech critic Shoshana Zuboff[4] has argued that lobbying – alongside establishing relationships with elected politicians, a steady revolving door, and a campaign for cultural and academic influence – has acted as the fortification that has allowed a business model, built on violating people's privacy and unfairly dominating the market, to flourish without being challenged.

3 https://digital-strategy.ec.europa.eu/en/policies/digital-services-act-package

4 Zubbof, S. (2019), The Age of Surveillance Capitalism: The Fight for a Human Future at the New Frontier Of Power, Profile Books, pp 121-127 & 340-341

This is also the case at EU level. The aim of Big Tech and its intermediaries seems to make sure there are as few hard regulations as possible – for example those that tackle issues around privacy, disinformation, and market distortion – to preserve their profit margins and business model. If new rules can't be blocked, then they aim to at least water them down. In recent years these firms started embracing regulation in public, yet continue pushing back against behind closed doors. There are some differences between what different tech firms want in terms of EU policy, but the desire to remain 'unburdened' by urgently needed regulations is shared by most of the large platforms.

Big Tech's deep pockets might also reflect the fact that this industry is rather new and emerging, and its home base is not the EU. Most of the big players come from the US. This has several consequences for the lobbying efforts of the industry in the EU. First of all, channels of influence are still in the process of being built. The ties to governments are not as close as, for instance, between the German Government and its national car industry. This, in addition to growing criticism of Big Tech's business practices, can start explaining why the digital industry's lobbying relies heavily on influencing public opinion and on using third-parties, such as think tanks and law and economic firms, as a tool for that purpose.

The Digital Markets Act and the Digital Services Act – the two strands of the Digital Services Act package – are the EU's first legislative attempt to tackle the overarching power of the tech giants. And the lobbying battle being waged over them show us the lobby might of the tech industry in practice. More than 270 meetings on these proposals have taken place, 75 percent of them with industry lobbyists. Most of them targeted at Commissioners Vestager and Breton who are responsible for the new rules. This lobby battle has now moved to the European Parliament and Council. In spite of the lack of transparency, we start seeing Big Tech's lobbying footprint in the EU capitals.

Photo: Alexandros Michailidis / Shutterstock.com

Executive Vice-President of the European Commission Margrethe Vestager and Commissioner Thierry Breton at a press conference on the Digital Services Act and the Digital Markets Act in Brussels, Belgium on Dec. 15, 2020.

The EU is showing some willingness to tackle the power of the digital giants. But this is a huge task for policy-makers being confronted with heavy pushback from the sector. Its massive lobby firepower is the first thing policymakers will need to face. The Digital Services package could be an opportunity to deliver a better internet that benefits people, small businesses and communities. Big Tech's huge concentration of economic and lobby power cannot be allowed to distort this process.

WHAT'S WRONG WITH THE DIGITAL INDUSTRY?

Large digital platforms have been growing immensely in the last two decades. By late 2020, Apple, Microsoft, Amazon and Google had all reached over $1 trillion in market capitalisation[5]. Facebook joined this club in June 2021[6]. As these platforms are by now extremely big and economically powerful, they are often referred to as Big Tech. They practically dominate their respective markets, marking a new dimension of power concentration in our societies.

The whole EU economy is currently becoming digitalised, thus even increasing the importance of Big Tech's products. Our societies are more and more dependent upon the services provided by these online platforms. As per the EU Commission, while there is a multitude of online platforms operating in the EU, most of which are small and medium enterprises, "a small number of large online platforms capture the biggest share of the overall value generated"[7].

While proposing the Digital Markets Act, the EU Commission stated that large platforms dominate different sections of the market and are unavoidable for businesses to reach customers and vice versa. The Commission argues that these firms have used this dominance to set the terms of how to participate in these markets and to get away with unfair behaviour towards its businesses, customers and end users[8].

The Commission's proposal is then to adopt the concept of digital gatekeepers, broadly meaning market dominant companies, and adopt a set of rules applying only to these gatekeepers. These include prohibiting them from merging personal data collected across services and demanding they refrain from self-preferencing (e.g. giving their own products top billing in Internet searches). The proposal also obliges gatekeepers to allow competing services to interact with the gatekepeer's own operating system, hardware, or software[9]. This type of interoperability has been one of the main public points of discussions as it could give users more control and choice over the services they use (e.g. users that do not want to accept the privacy terms from Facebook's WhatsApp could switch to a more privacy oriented messaging service and still be able to text users that do not switch). Although, SME's[10] and NGO's[11] alike were dissatisfied that the Commission's interoperability proposal is limited to the gatekeeper's non-core services.

With the growing economic power of these companies came actual power. SOMO argues that "Big Tech has become the obligatory interface for all types of exchange in

5 https://www.somo.nl/how-big-tech-is-becoming-the-government/
6 https://www.theverge.com/2021/6/28/22554502/facebook-1-trillion-dollar-market-cap-company-business
7 https://eur-lex.europa.eu/legal-content/en/TXT/?qid=1608116887159&uri=COM%3A2020%3A842%3AFIN
8 https://eur-lex.europa.eu/legal-content/en/TXT/?qid=1608116887159&uri=COM%3A2020%3A842%3AFIN
9 https://eur-lex.europa.eu/legal-content/en/TXT/?qid=1608116887159&uri=COM%3A2020%3A842%3AFIN
10 https://www.euractiv.com/section/digital/news/eu-smes-in-bid-for-greater-interoperability-in-digital-markets-act/
11 https://www.eff.org/deeplinks/2020/12/eus-digital-markets-act-there-lot-room-improvement

the digital economy. It is as if a new screen now overlays economy and society, with Big Tech functioning as its underlying operating system, increasingly subjecting the rest of the world to its imposing and intrusive logics."[12]

And there's no denying of just how intrusive these business models can be. Take, for instance, targeted online advertising which is based on the extensive collection of personal data of users that is then processed and sold to advertisers, who in turn use it to personalise ads. This business model, pioneered by Google and later developed by Facebook, has now become pervasive. But it raises serious risks for individuals and society. In 2018, the Guardian revealed that Facebook had allowed third party company Cambridge Analytica to gather the data of at least 87 million users without their knowledge. Apparently, that personal data was then used to micro-target voters during the Brexit referendum and the US elections[13].

Since then, more attention has been paid to how such targeted ads and the platform's recommender systems – algorithms or other systems that rank content visible to each user – impact people's privacy but also democratic processes and the spread of disinformation.

This was recognised in the EU Commission's proposal for a Digital Services Act which sets out to update the responsibilities of digital platforms especially in regards to illegal content. The proposal also includes clauses to address the potential systemic risks created by very large platforms, including targeted online advertising and the platforms' recommender systems[14].

These proposals are so far limited to accountability, based on audits, and higher transparency requirement. The European Data Protection Supervisor, however, has recommended that due to the "multitude of risks associated with online targeted advertising", the rules should go beyond mere transparency to include "a phase-out leading to a prohibition of targeted advertising on the basis of pervasive tracking". Also, when it comes to recommender systems, the EDPS recommended further steps, including that recommender systems should not be based on profiling and that additional transparency and user control should be guaranteed[15].

Whether we look at the platforms' market power or the risks associated to its business model, it is clear that in order to democratise digitalisation, stronger rules for the digital industry are needed more than ever.

12 https://www.somo.nl/how-big-tech-is-becoming-the-government/
13 https://www.theguardian.com/news/2018/mar/17/cambridge-analytica-facebook-influence-us-election
14 https://eur-lex.europa.eu/legal-content/en/TXT/?uri=COM:2020:825:FIN
15 https://edps.europa.eu/system/files/2021-02/21-02-10-opinion_on_digital_services_act_en.pdf

2.

The lobby firepower of the digital industry

When you think about digital industry lobbying, you are likely to think of the five digital giants: Google, Amazon, Facebook, Apple, and Microsoft – sometimes known as 'GAFAM'. Unsurprising, given these billion-dollar companies dominate the global markets, but beyond them are many other industry actors trying to exert their influence on policy-making in the EU.

THE DIGITAL INDUSTRY IN THE EU

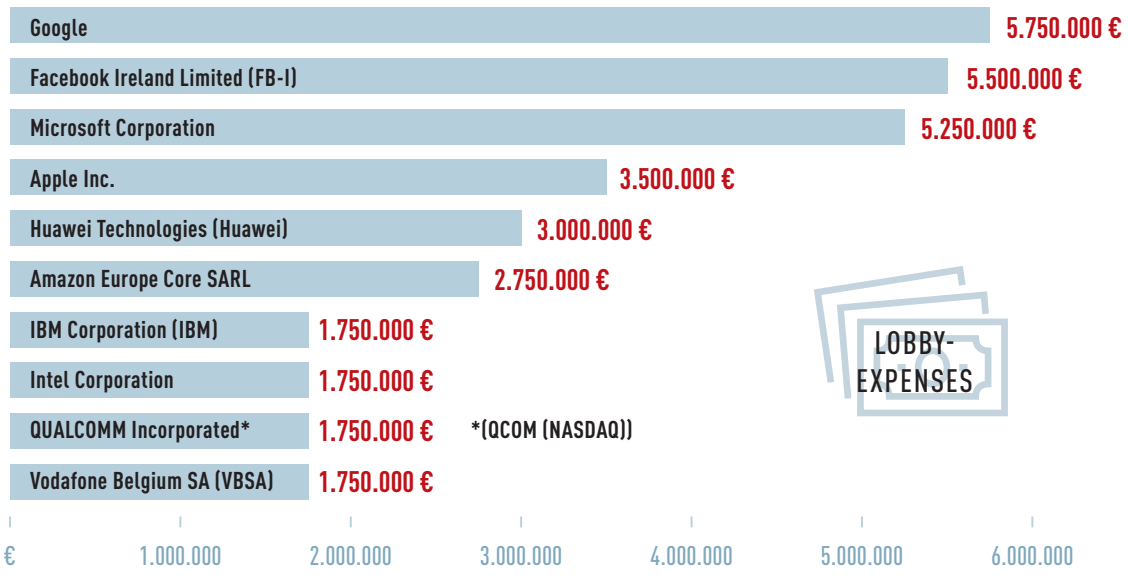
The digital industry as a whole spends over € 97 million lobbying the EU Institutions per year and employs 1452 lobbyists on its behalf. This vast firepower indicates that the industry sees a lot at stake in the current policy discussions, and it is notable that the tech firms are outspending all other sectors in terms of lobbying.

Photo: areporter/Shutterstock.com

The EU Commission in Brussels. Policymakers will need to face the lobbypower of the digital industry to ensure a democratic digitalization.

At the upper end, the top ten invest at least € 1 million each on lobbying. There are only six companies that spend more than € 2 million. Google, Facebook, and Microsoft stand out with a lobby budget of more than € 5 million each. When comparing corporate lobby spending across sectors, Google, Facebook, and Microsoft remain the top spenders in Brussels. Apple ranks 6th, following Bayer and Shell,[16] whereas Amazon ranks 15th. US tech giants are not only outspending other digital industry actors, they are outspending all actors.

TOP 10 LOBBY SPENDERS OF THE DIGITAL INDUSTRY[17]



Our research (see Methodology in annex) identified 612 companies, groups, and business associations lobbying on behalf of the digital industry in the EU. Beyond the obvious tech giants there is a broad range of companies working primarily in sectors like energy, finance, defence, and mobility that are also active in policy discussions around digital policy. This shouldn't be a surprise, as digitalisation and the digital single market affect almost all economic sectors. Consequently, many nationally and internationally operating companies have an interest in shaping the digital single market policies.

Although the combined lobbying power of the whole sector is very high, lobby expenses vary greatly from € 5,000 to € 5,750,000. Aside from the notable big spenders, most companies' lobby budgets are at the lower end of this range: 75 per cent have a budget lower than € 200,000. Of these 75 per cent, the bottom 25 per cent spend less than 5000 €.

16 See https://lobbyfacts.eu/reports/lobby-costs/all/0/2/2/2/21/0/, last checked 10 June 2021.

17 For the top ten ranking we focus on the digital platforms and infrastructure companies.

There is not just a budgetary, but also a geographic imbalance among digital corporations, with the largest number of them coming from the US: 20 per cent of the 599 companies lobbying digital policy issues in Brussels have their head office in the United States. The European countries with the largest number of head offices are Germany (14 per cent), the United Kingdom (10 per cent), and France (8 per cent). The number of US companies is probably even higher since some of them have set up European subsidiaries like Amazon Europe (Luxembourg), Facebook Ireland (Ireland), and Dropbox (Ireland).

Less than 1 per cent have head offices in China or Hong Kong, among them are companies like Huawei (China) and Alibaba (Hong Kong). That is to say that in spite of the exponential growth of the Chinese tech market, Chinese firms have so far not invested in EU lobbying quite as heavily as their US counterparts.

DIGITAL PLATFORMS AND INFRASTRUCTURE

Beyond this big picture view of the digital industry, it is important to focus on those companies that are most active in shaping the digital single market. For that purpose, we found and categorised "online platforms", meaning companies that facilitate interactions between different sets of users online[18], and "information and communication technology (ICT) infrastructure", companies providing digital infrastructure such as hardware, software, and telecommunication services[19].

Altogether, there are 159 digital platforms and 288 digital infrastructure companies in the sample. As with our wide overview, Google, Microsoft, Facebook, Apple, and Amazon stand out. But Huawei, with a lobby budget of € 3 million, can also be counted in this group. These six tech companies spend € 2 to € 5,75 million each on lobbying the EU.

Next to the million dollar platforms, we find Netflix, Airbnb, Uber, Spotify, Alibaba, and eBay. Their lobby budgets range from € 600,000 to € 900,000, far above the average spend of tech companies. In addition, all top nine infrastructure companies (for example Intel, Qualcomm Incorporate, Vodafone) have a lobby budget over € 1.25 million.

In terms of sheer number of lobbyists, Facebook (14 Full Time Equivalent – FTE), Huawei (19 FTE) and Microsoft (7.5 FTE) are notable for their firepower, followed by Google and Amazon with 5 FTE[20]. Beyond the top ten corporations, there are platforms like Booking.com (3 FTE), Netflix, and Airbnb (2.75 FTE each) in Brussels.

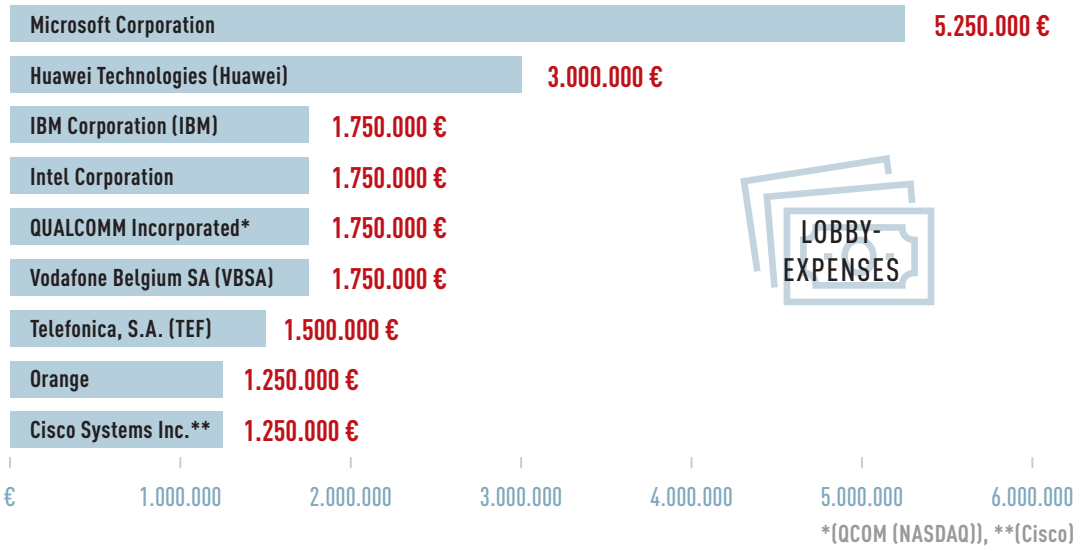
18 We took the OECD definition of an online platform is as "a digital service that facilitates interactions between two or more distinct but independent sets of users (whether firms or individuals) who interact through the service via the Internet". These can include online marketplaces, search engines, social media, app stores, among others. https://doi.org/10.1787/53e5f593-en

19 Some companies in our sample could not be categorised either as a digital platform or ICT infrastructure.

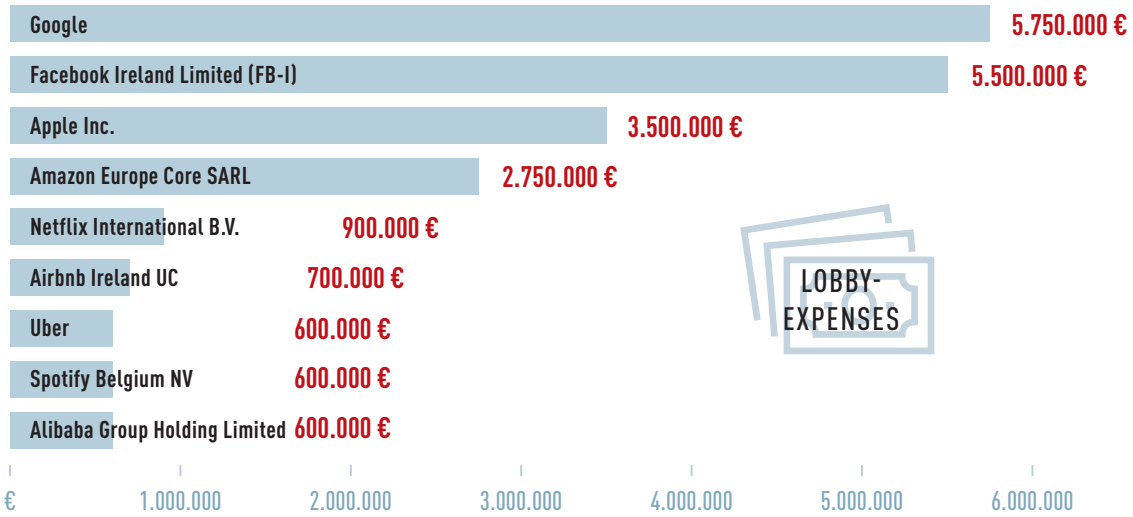
20 Regarding the full time equivalent (FTE), Huawei is at the top with 19 FTE, followed by Facebook (14), Qualcomm Incorporate (9), and finally Intel (8.25).

TOP LOBBY SPENDERS: **INFRASTRUCTURE PROVIDERS AND PLATFORMS**

INFRASTRUCTURE PROVIDERS



PLATFORMS

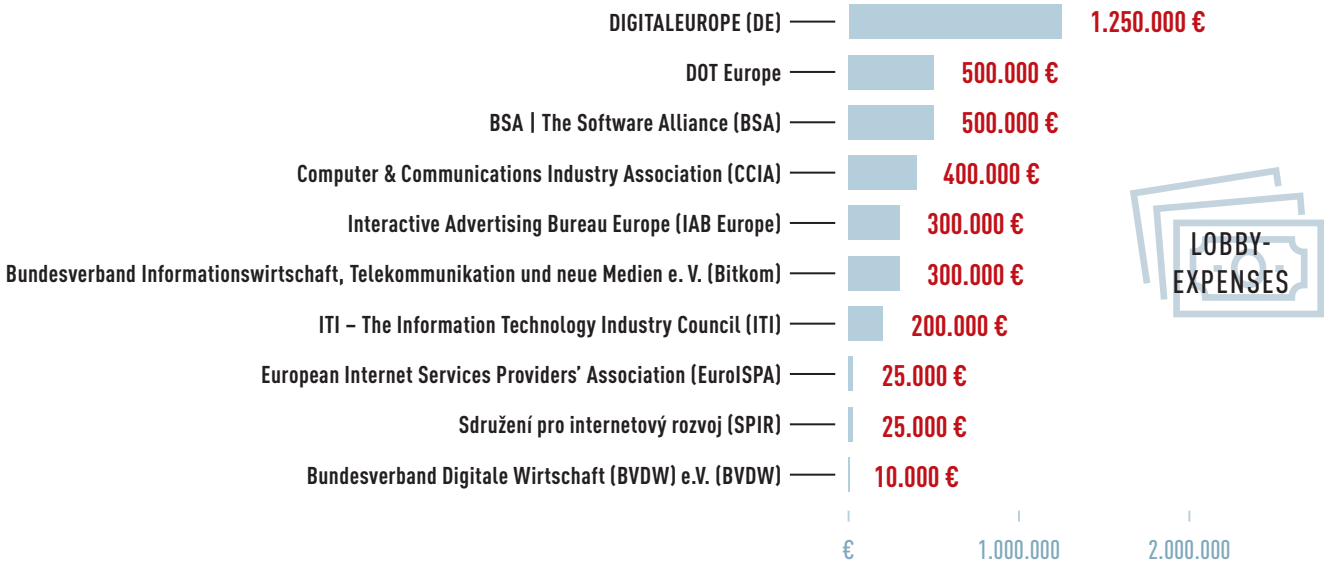


To put this in context, the majority of platforms and infrastructure companies usually have only one lobbyist working on the ground.

The top six in terms of lobby spending have an office in Brussels, but only 14 per cent of the overall digital industry can say the same. These six also have the largest financial fire-power, the highest number of lobbyists, and they are also closest to the EU institutions.

How close the top six tech platforms and infrastructure companies are to the EU insti-tutions becomes clear by analysing the number of meetings they have had with the Von

TOP LOBBY SPENDERS: **TRADE ASSOCIATIONS**



der Leyen Commission since December 2019: Google leads with 46 meetings; Facebook and Microsoft are close behind with 40 meetings each, Amazon is third with 20 meetings. Apple and Huawei share the last position with 14 Commission contacts each.[21]

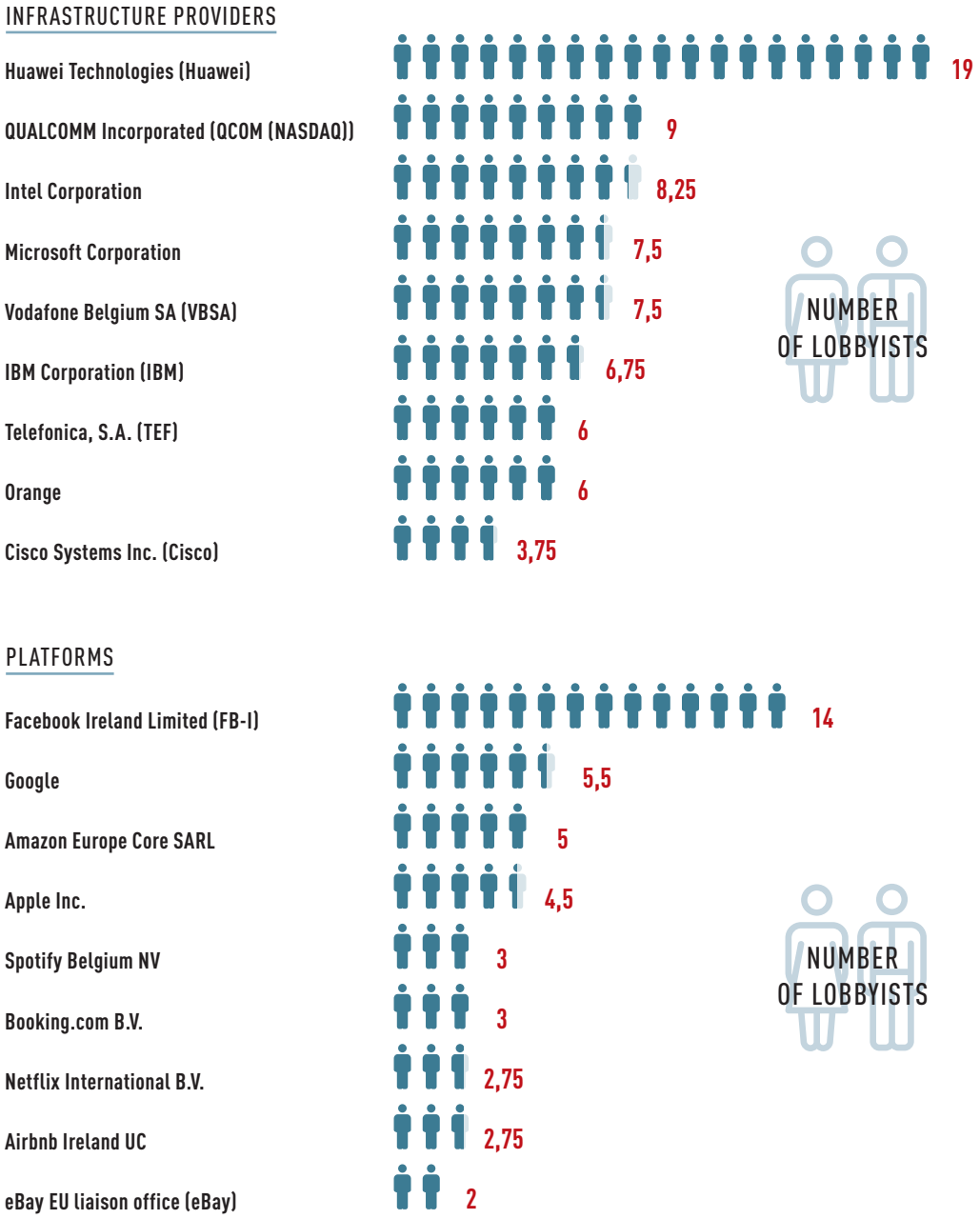
TRADE AND BUSINESS ASSOCIATIONS

Digital industry companies are not just lobbying individually. They are also collectively organised into business and trade associations which are themselves important lobby actors. At EU level, the largest ones according to their lobby expenses are DigitalEurope, DOT Europe, and the European Internet Service Providers' Association (EuroIspa). The Interactive Advertising Bureau Europe (IAB Europe) plays an important role on behalf of the interests of online advertisers. Next to these European level associations, there are three international associations also heavily lobbying the EU Institutions: the Computer & Communications Industry Association (CCIA), BSA – The Software Alliance, and the Information Technology Industry Council (ITI). The fact these three associations with headquarters in the US play a major role in EU lobbying again reflects the might of the US digital industry.

At the top of the list of industry associations by lobby expenses is DigitalEurope declaring a budget of € 1.25 million and 15 lobbyists. This is outstanding compared to the other associations. Its members include Google, Facebook, Microsoft, Amazon, Apple, Huawei, and many other international companies such as Zoom, Uber, and Airbnb.

21 These numbers are based on the meetings proactively published by the EU-Commission for the top level, ie Commissioners, their Cabinet, and Director Generals.

NUMBER OF LOBBYISTS FOR THE TOP LOBBY SPENDERS*



*numbers refer to full-time equivalents (FTE)

Its membership also includes members mainly operating in other sectors like pharmaceuticals, finance, and chemicals (eg Bayer, Airbus) again showing the increasing importance of digital products and processes for industry across sectors.

After DigitalEurope, DOT Europe and BSA share the second position, each spending € 500,000 on lobby activities. In comparison to the top ten tech giants, the lobby expenses of the associations do not seem to be particularly high. But the business

associations spend much more than the bottom 75 per cent of the companies in the digital industry do.

In the ranking by number of lobbyists, Bitkom, the German digital business association, comes second with 11 lobbyists employed (4.25 FTE), and it also maintains an office in Brussels.

LOBBY CONSULTANCIES WORKING FOR THE TOP TEN

Next to business associations, Big Tech hires professional consultancies to lobby on its behalf. Among the 98 consultancies with a Brussels office, 14 work for the top ten digital companies.[22]

In 2019 and 2020, Google, Apple, Amazon, Facebook, Microsoft and Qualcomm hired the most lobby consultancies. These included Fleishman-Hillard, EU-Strategy, and FTI Consulting. Google remains at the top, spending € 1.28 million on 12 consultancies, almost a quarter of the company's total lobbying budget. Apple and Qualcomm share the second position, both spending € 1.3 million on consultancies. In the case of Qualcomm, this is nearly 75 per cent of its lobby budget.

Afore Consulting and Flint Europe both work for four of the GAFAM corporations.[23] These contracts account for half of Flint Europe's total lobby budget and for about a quarter of the lobby expenses of Afore Consulting. Consultancies seem to play a big role in Big Tech's lobbying. Equally, Big Tech accounts for a large part of the budget of some of the consultancies.

BIG TECH DOMINATES OTHER SECTORS

Up to this point, we have looked at the digital industry in isolation. But how big is its influence in comparison to other prominent sectors in the EU?

The top ten digital platforms and infrastructure companies spend altogether € 32.75 million on lobbying. Google, Amazon, Facebook, Microsoft and Apple alone spend almost € 23 million. Thus, the top ten spend far more than the top ten chemical companies (€ 17.75 million) and three times more than the expenses of the top ten car companies (€ 9.85 million) including Volkswagen, Daimler, and BMW. Similarly, the financial industry (€ 12 million) barely competes with the expenses of the digital top ten.

22 We considered those professional consultancies that have an office in Brussels and also had meetings with the European Commission. This filtering allowed us to get a sample of the most relevant actors but, in turn, we might have excluded consultancies that provide lobbying services but do not directly lobby the high-levels of the Commission.

23 GAFAM refers to the five biggest digital platforms from the US: Google, Amazon, Facebook, Apple, Microsoft.

Digital platforms outnumber other industries in terms of their lobby spending, reflecting the sectors' dominant role. This role has increased drastically in the past ten years. In 2013, Google, Facebook, Microsoft, Apple, Amazon spent € 7.3 million, one third of what they are spending today. At the beginning of the 2010s, with the exception of Microsoft, their lobby budgets were all below € 1 million.[24]

The rising lobby firepower of big tech and the digital industry as a whole mirrors the sectors' huge and growing role in society. It is remarkable and should be a cause of concern that the platforms can use this firepower to ensure their voices are heard – over countervailing and critical voices – in the debate over how to construct new rules for digital platforms.

Photo: jamesteohart/Shutterstock.com

The digital industry has a growing influence on more and more aspects of our daily life.

24 On the rising lobby budgets of GAFAM see www.lobbyfacts.eu

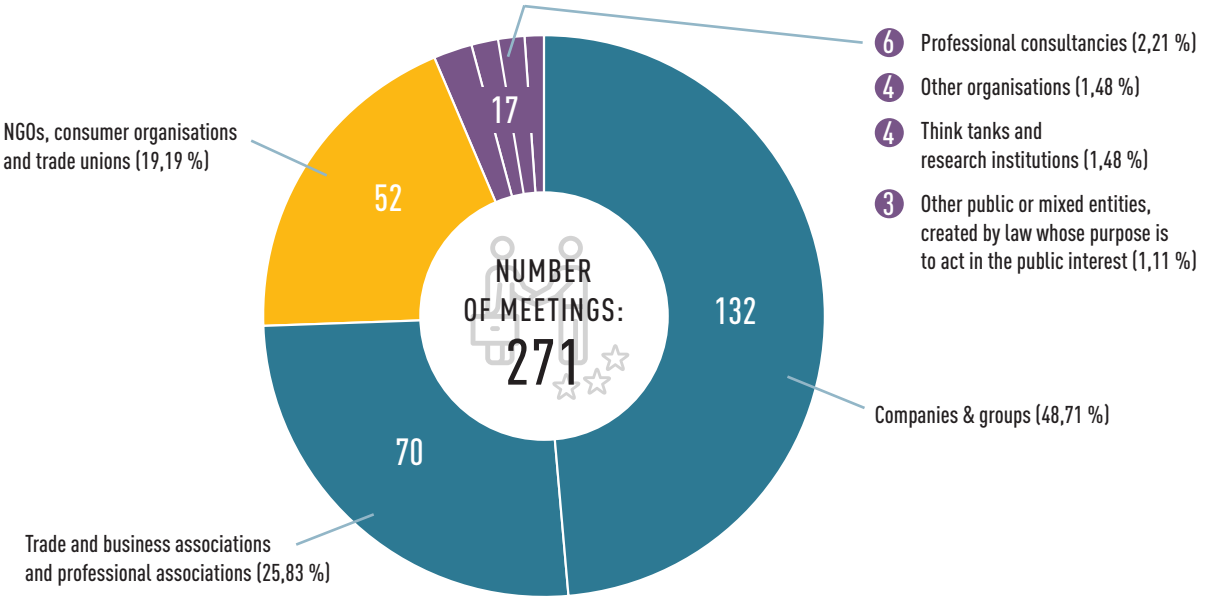
3.

The battle around the Digital Services Act package: Big Tech's firepower in practice

The previous chapter made evident the digital industry's sheer lobby firepower. Intense lobby battles around key EU legislation to regulate the digital platforms shows how such lobbying firepower plays out in practice. Currently, most of the lobbying is focused on the Digital Markets Act (DMA) and the Digital Services Act (DSA), two policy initiatives that could impact the business model of Big Tech firms. Whereas the DSA is set to update the legal framework for online intermediaries – which covers content moderation practices, including recommender systems and online advertising – the DMA will target the excessive economic and monopolistic power of digital platforms by developing concrete behavioural measures – a list of do's and dont's – for platforms that control the access to a market, so-called gatekeepers (see box, p. 8).

A significant portion of digital industry lobbying has been focused on these two pieces of legislation since the new Commission took office in late 2019.

MEETINGS WITH THE EU-COMMISSION ON THE DSA/DMA



75 PER CENT OF DIGITAL SERVICES ACT PACKAGE MEETINGS WERE WITH THE INDUSTRY

Since then, the EU Commission had more than 271 encounters to discuss the DSA and the DMA.[25] Of these 271 contacts, 202 took place with companies and their trade associations, and only 52 with non-governmental organisations, consumer organisations, and trade unions.

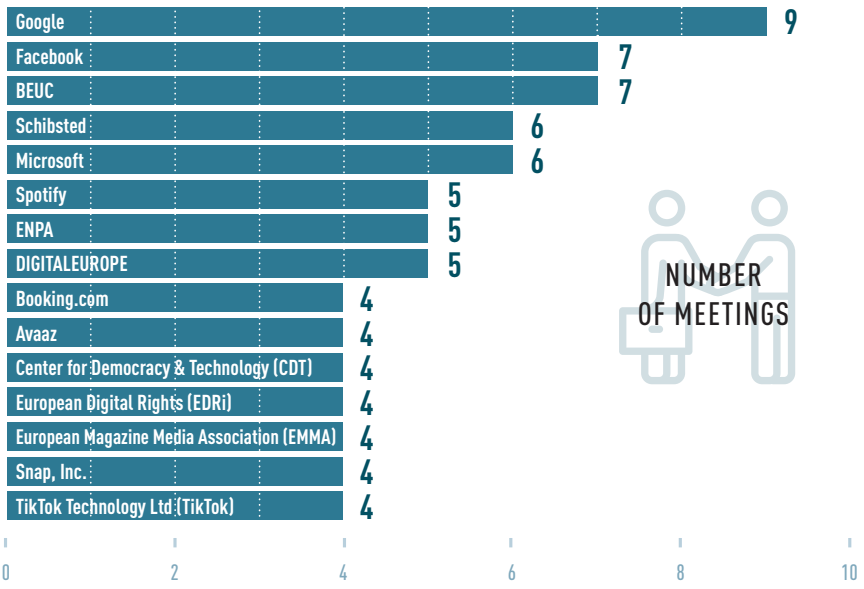
Every three out of four meetings of the Commission were with industry lobbyists. The industry enjoys clear privileged access to the Commission.

The rest of the meetings took place with professional consultancies (2 per cent) and think tanks (1 per cent). However, in most cases, consultancies also lobby on behalf of the industry. For example GPlus – the lobby consultancy with most meetings on DSA/DMA – counts among its clients Qualcomm, a leading semiconductor company from the United States, and Booking.com, the Dutch online travel platform.

A large number of the think tanks active around the DSA and the DMA are at least partly industry-funded. Their role in the lobbying process is not really reflected in the low number of meetings with the Commission (think tanks had only 4 meetings), but rather in the events organised and studies published on the DSA and the DMA (more on think tanks in Chapter 5).

Other meetings the Commission held were with two German public radio and TV stations, Deutsche Welle and ZDF. They make up a small, negligible part of the meetings.

TOP 15 ACTORS LOBBYING ON THE DMA/DSA



25 Meetings that were counted comprise meetings that contained the key words DSA, Digital Services Act, DMA, Digital Markets Act, Competition Policy in the context of digitalisation, platforms, and platform regulation.

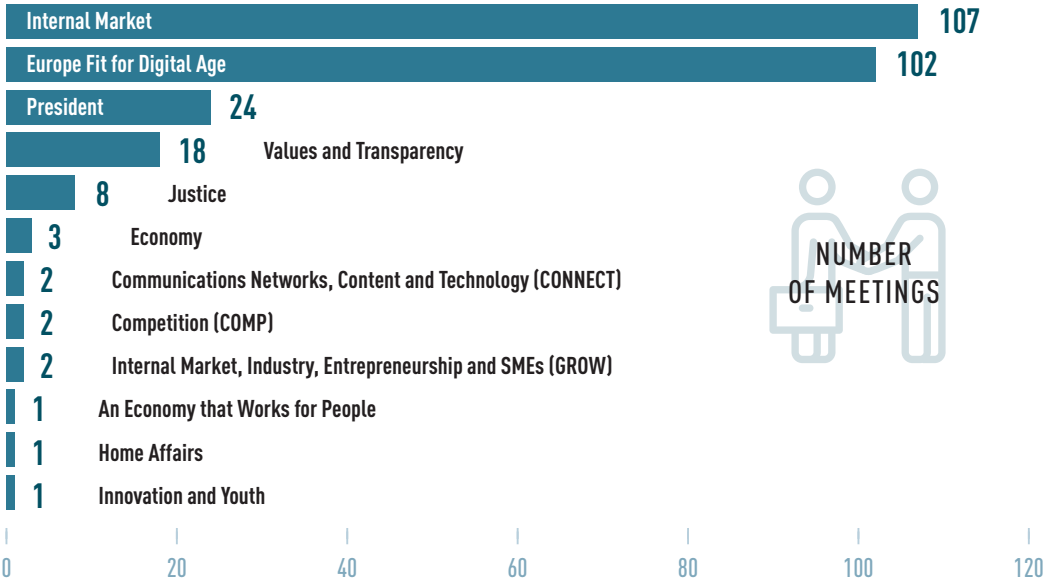
PLATFORMS DOMINATE THE TOP TEN

A look at the top 15 lobbyists based on the number of meetings reinforces the extent of industry's privileged access to EU officials. Twelve of the top fifteen lobby actors on the DMA/DSA represent business interests, among them Google, Facebook, Microsoft, Spotify, and the digital industry association DigitalEurope. Only three public interest organisations figure in the top ten: the umbrella organisation of European consumer associations BEUC, Avaaz, an online campaigning platform working to stop the spread of disinformation and the European Digital Rights Initiative (EDRi). Compared to the 78 meetings of the top 15, only 15 were held with civil society organisations.[26]

Two of the European Commission's portfolios (DG) received the most contacts from lobbyists: Internal Market (107), and Europe Fit for a Digital Age (102). This is unsurprising as Commissioner Breton (Internal Market) and Commissioner Vestager (Europe Fit for a Digital Age) are responsible for the DMA/DSA. Together, their portfolios held 77 percent of the meetings with lobbyists.

Commission President von der Leyen's and her Cabinet also had 24 lobby contacts on the new regulations for digital platforms. The fact President von der Leyen's Cabinet has been directly addressed by lobbyists on the matter mirrors how important the upcoming rules are for the Commission as a whole. Also more frequently addressed were two further portfolios: Value and Transparency and Justice.

MEETINGS ON DMA/DSA PER EUROPEAN COMMISSION PORTFOLIO



26 Among the top 15 actors lobbying on the DMA/DSA is a also the Center for Democracy and Technology (CDT), a think tank partly funded by Big Tech (see chapter 5).

EUROPE FIT FOR A DIGITAL AGE: CHAMPION OF INDUSTRY MEETINGS

Not all the Commission portfolios had the same proportion of meetings with industry: the champion was Europe Fit for a Digital Age with almost 80 per cent of meetings with business, whereas 60 percent of the Internal Market portfolio's meetings were with industry lobbyists. This could reflect the fact that there are a higher number of non-industry actors focused on the DSA in their lobbying, for which Internal Market is primarily responsible.

The picture changes when you look at Commissioner Breton himself (without taking into account his cabinet). His overall lobby contacts were 84 per cent with business lobbyists and business associations (111 out of 132 contacts).[27]

In this context it is noteworthy that only two cabinet members of Commissioner Vestager and Commissioner Breton, together held more than 50 per cent of the meetings with lobbyists on the DSA/DMA. These were Filomena Chirico (Cabinet Breton), and Werner Stengg (Cabinet Vestager), who together had 158 of the 271 lobby contacts, as both are responsible for the upcoming new rules in their portfolios. Both made clear in an interview with LobbyControl and CEO how they made an extra effort to include civil society positions in the lobbying, for instance by double-checking the positions of consumer organisations.

UNBALANCED INPUT VIA CONSULTATION ON THE DIGITAL MARKETS ACT

It is not only the lobby contacts on the DMA that are dominated by the digital industry. Consultations on the upcoming rules for gatekeepers also received input predominantly from business representatives. Take the consultation on a New Competition Tool, a preliminary component of the DMA, carried out in 2020. According to the official EU Commission evaluation, 65 per cent of the submissions were from companies and business associations, only around 12 per cent were from NGOs, consumer organisations, and trade unions taken together.[28]

A further category in the evaluation is 'EU-citizens'. However, under this category we found entries that were miscategorised[29], for instance, a representative of ECO, a German association of the internet industry, and a member of a law firm from Spain[30].

The geographical distribution of submissions is also striking. Of course, 34 per cent of the submissions came from EU offices in Brussels. But most input came from one specific member state: Germany (18 per cent); followed by the UK (9 per cent), the

27 Compare integritywatch.eu, last checked on the 16 June 2021.

28 https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12416-New-competition-tool/public-consultation_en

29 https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12416-New-competition-tool/public-consultation_en

30 Other categories in the survey are "other" (5.85%), "academic/research institutions" (5,85%), "public authority" (4,79%).

Netherlands (7 per cent), and the United States (6 per cent). Business interests from the most powerful economy in the EU seem to be the most active in trying to get its voice heard on new regulations for digital platforms.

DMA/DSA: HOW THE DIGITAL INDUSTRY TRIES TO PUSH THROUGH ITS INTERESTS

All in all, there is huge imbalance in terms of civil society's and the digital industry' lobby access, with industry clearly dominating the discussions with the EU Commission. This was especially visible in discussions surrounding the Digital Markets Act.

Chapter 4 outlines Big Tech's overall lobbying narrative: a mix of public support of rules, but only soft rules shaped by themselves, combined with geopolitical arguments and speaking on behalf of smaller companies. Lobby position papers and letters by the tech industry show how this has played out in the context of the Digital Services Act package.

WE SUPPORT REGULATION, BUT...

A rejection of regulation had been the permanent undercurrent of the digital industry's lobbying. However, in the debate about the DSA/DMA, the picture is not as straightforward as one might assume. Generally, digital platforms have publicly embraced the idea of new regulations for platforms[31].

The opposition from business lobbyists across sectors was however fundamental when a strong emphasis on structural remedies was still part of the debate for the DMA. Strong reactions of business associations outside the digital sector, for instance that of AFEP (Association française des entreprises privées) the "voice of large French Companies", show that business lobbyists in Brussels were quite worried about structural measures like a "new competition tool", a new way for competition authorities to investigate a whole market and its functioning, that would have been applied beyond the digital sector.[32] The powerful EU employer association BusinessEurope warned that the New Competition Tool could "discourage investment" in its position paper on the instrument.[33] This warning was echoed by digital industry lobbyists too.[34]

In spite of publicly supporting the proposals, the firms still lobby against them. Apple, for instance, stated that it supported the proposal and its objectives but warned that

31 See for instance the opinion article by By Nick Clegg, VP of Global Affairs at Facebook: https://about.fb.com/news/2021/01/europe-must-not-turn-against-the-creative-use-of-data/

32 See for instance AFEP, The Voice of large French Companies position on new competition tool in September 2020 (access to document request to DG GROW by Max Bank, available online via https://www.asktheeu.org/; please note that further footnotes will only refer to " DG XY atd requests. They are all available online on the asktheeu website under Max Bank's requests).

33 Business Europe Position Paper on the proposal for a New Competition Tool (NCT). https://www.businesseurope.eu/sites/buseur/files/media/position_papers/legal/2020-09-08_pp_new_competition_tool.pdf

34 See for instance the reaction of DigitalEurope to the Commission's DMA/DSA proposals. https://www.digitaleurope.org/news/digital-europe-on-dsa-dma-clarity-on-platforms-roles-and-responsibilities-as-well-as-enforcing-existing-competition-tools-are-key/

in spite of its intentions, the proposal "may have serious implications for a European digital economy".[35]

WATERING DOWN CONCRETE MEASURES

With respect to the obligations that will be imposed on gatekeepers (see box, p. 8), the devil lies in the details. Google for instance opposes "overly prescriptive obligations [that] will risk being soon outdated, especially in the sector where technological progress is fast"[36]. In other words, Google argues for ex-ante regulation which remains rather abstract and takes a case-by-case approach.

Digital players want to prevent regulation and aim for a case-by-case approach. This would pervert the purpose of the DMA: creating rules and standards of behaviour.

Facebook also seems to believe "that automatic, self-executing rules that are applicable to all companies and irrespective of the market realities in which they operate will lead to unintended, disproportionate, and damaging consequences."[37]

In turn, Apple argues that the Commission's DMA proposal "equates 'size' with 'harm', and applies a one-size-fits all approach to very diverse products, markets and companies". Its preferred route then is for the proposal to be changed so it would be based on "more differentiation, case-by-case, in assessing the behaviour and effects of platforms (and so called gate-keepers); and more differentiation in applying specific obligations" and to increase the regulatory dialogue with the gatekeepers affected with the intent of increasing "the understanding of regulators" and to "enable them to apply the appropriate remedy to a specific situation".[38]

The case-by-case argument is taken up by industry trade associations like the Computer and Communications Industry Association (CCIA).[39] CCIA suggests not only a case-by-case approach, but also an implementation "with the insight and participation of industry."[40] Big tech lobbyists have been busy in Brussels spreading the idea of an extended "sound compliant dialogue" between the Commission and gatekeepers, as a Facebook lobbyist argued in a lobby meeting with the Renew MEP Kovařík.[41]

This approach is highly problematic, as it is an attempt to water down the implementation of the concrete rules set out in the DMA. The whole purpose of the Digital Markets Act is to create rules and standards for the behaviour of the platforms. Transforming the act into a case by case analysis would be to entirely pervert its purpose.

35 https://corporateeurope.org/sites/default/files/2021-07/Correspondence%20between%20Apple%20and%20Estonian%20Ministry%20of%20Justice%20regarding%20the%20DMA.pdf

36 Secretariat General's report of a call with Google on the 22/10/2020 (atd request to the Secretariat General).

37 https://enterprise.gov.ie/en/Consultations/Consultations-files/Facebook-DMA-Submission.pdf

38 https://corporateeurope.org/sites/default/files/2021-07/Correspondence%20between%20Apple%20and%20Estonian%20Ministry%20of%20Justice%20regarding%20the%20DMA.pdf

39 Presentation on DMA by CCIA (document 10, DG connect).

40 Presentation on DMA by CCIA (document 10, DG connect).

41 Stakeholder meeting on the DMA organised by MEP Kovařík on the 12th July 2021.

'TOO MUCH' REGULATION 'UNDERMINES' INNOVATION

Another argument by the digital industry is that too many rules will stop startups and SME's from entering digital markets and fostering innovation. For instance this was the argument put forward by the Developers Alliance in its communication with the Commission,[42] which echoed that of the rest of the industry (see box, p. 31).

Many companies support the DMA – as long as it does not apply to them. Defining who it applies to will be crucial.

> Many companies responses to the DMA have been to offer general support as long as it only applies to others. One of the key lines of conflict will be who is defined as a gatekeeper, meaning companies with significant control over a market. From the Commission's proposal, it is clear that Google, Amazon, Apple, and Facebook will be covered. Beyond them there is some grey area.[43] Smaller platforms, such as Airbnb[44] and Spotify have warned they should not be covered by such rules. Spotify, for instance, stressed to the Commission the importance of how to define gatekeepers. Spotify, a European platform, emphasised the support for a targeted scope on the big US platforms by key EU member states, such as Germany, France, and the Netherlands. In other words, the platforms with headquarters in the EU try to play European policy-makers off against US digital platforms, in order not fall under the definition of digital gatekeepers.

Their insistence on maintaining a "targeted scope", covering only a very small number of very large digital platforms, for the DMA has apparently been taken into account by the Commission and also by the European Parliament DMA rapporteur Andreas Schwab (EPP). Schwab made clear in his report on the DMA that he wants a very narrow scope for the gatekeeper definition.[45]

OTHER BUSINESS GROUPS DEMAND AMBITIOUS DMA/DSA

Other business sectors, such as media and publishing, smaller e-commerce, and the hospitality industry, are calling for strong rules both in the DSA and the DMA, as they are concerned over the risks of being pushed aside by the market power of digital platforms. For instance the hotel association HOTREC calls for strong rules for gatekeepers in the DMA.[46] And the German e-commerce association Bundesverband Onlinehandel explicitly demands more interoperability between businesses selling on platforms and the gatekeeper platforms, meaning the ability for external businesses to interact with the services provided by the platform. The focus of the critique was Amazon Marketplace.[47]

42 Developers Alliance presentation on DMA (document 2, atd request to DG CONNECT;).
43 https://voxeu.org/article/european-commission-digital-markets-act-translation
44 Airbnb positions on DMA. (DG Competition, atd. Request, doc 7).
45 https://netzpolitik.org/2021/digitale-maerkte-gesetz-ein-cdu-mann-steckt-europas-digitale-grenzen-ab/
46 HOTREC position paper on DSA/DMA (doc 17, DG Connect).
47 Bundesverband Onlinehandel position on DMA (document 28, 29, DG Connect).

Meanwhile the Association of European Radios (AER) stated it wants stricter rules for targeted online advertising in the DSA in order to be treated equally to digital platforms.[48] This is of course a crucial issue for digital platforms and quite conflictive, as there are demands by a number of Members of European Parliaments to prohibit targeted advertising entirely. IAB Europe, one of the digital industry associations, argues strongly against stricter rules for targeted advertising.[49]

THE LOUD VOICE OF THE DIGITAL INDUSTRY

All in all, the voice of the digital industry drowns out the voices of other sectors and civil society in the lobbying battle on the DMA/DSA. Certainly, in terms of lobby meetings and submissions to consultations, Big Tech, its associations, and the industry as a whole are dominating. There are conflicts between the different platforms and between the digital sector and other sectors. And these conflicts will continue to play a role in the ongoing lobby battles on the DMA and the DSA.

Digital platforms have already been able to celebrate their first victory as the DMA is mostly based on rules of behaviour and did not introduce any mechanism that could increase the speed with which structural remedies, meaning forced break-ups of different parts of a company, can be imposed. The battle around key points in the DMA, such as the gatekeeper definition and the concrete behavioural measures for gatekeepers has already begun. The aim is clear: water them down as much as possible.

THOSE WITH THE RESOURCES LOBBY THE CAPITALS

After the European Commission published its Digital Services Act package, it was up to the European Parliament and the Council to discuss them and prepare a common position on how they want to amend it.

The Council is often referred to as the 'black box' of EU policy-making because it is the least transparent of the EU institutions. It is difficult for citizens to know who is lobbying their national government on EU policies, or even what position their national government took in the Council. This – combined with the fact that lobbying at member state level requires massive resources and good connections – creates the conditions for undue corporate influence.[50]

48 AER position on DMA (document 4, dg connect).

49 Com report on meeting with IAB Europe (DG Grow atd request).

50 https://corporateeurope.org/en/2019/02/captured-states?hash=GC1gO4LOvsJ9PoYBMRD-PppbYI37-5Y_xepTj_m1UhQ

When it comes to the discussions regarding the DSA/DMA, we know that at least some EU capitals are being targeted by Big Tech firms but we do not have a complete overview of the lobbying taking place. Take the example of Estonia, a small country that nevertheless carries a lot of weight in tech discussions. Estonia's Ministry of Justice was responsible for drafting the country's position on the Digital Markets Act. A freedom of information[51] request revealed that the Ministry had held seven lobby meetings, and all except one were with Big Tech firms (Google, Amazon, Facebook, and Apple). Apple scored three meetings, one with the Minister.

The Ministry of Justice told us that no minutes were taken at these meetings. Further, it refused to share the position papers shared by these companies. But it did share the correspondence and Apple's was quite revealing: while it says it welcomes the DMA/DSA proposals and its objectives, Apple told the Estonian government it had serious concerns, especially regarding the Digital Markets Act. Its concerns seem to cover nearly the full proposal:
"– legal basis and regulatory objective
– uncertainty over scope, procedures and responsibilities
– budgets resources and proportionality
– ex-ante prohibitions and obligations
– regulatory dialogue".

In its emails, Apple details its concerns with specific obligations that gatekeepers, likely itself, would have to follow arguing that such rules would lead to expropriation,"free-riding", and "opens risks to the European digital economy". The company focuses particularly on clauses mandating that gatekeepers allow other services to interact with its own (i.e. interoperability and data access clauses) as the firm argues it would lead to less security and privacy for users. The Apple representative goes further by stating that article 6.1 (c), which could force Apple to not block users from downloading apps that are not in the App Store, could "impact the integrity of the entire ecosystem from a cybersecurity and foreign policy point of view".

In these meetings, Apple is sharing its position but is also trying to gather information from the Estonians regarding how the Council discussions were developing, including which points the Estonians would raise in the Competitiveness Council – information that is not public.

51 https://corporateeurope.org/sites/default/files/2021-07/Information%20request%20on%20the%20Digital%20Markets%20Act%20%28Estonian%20Ministry%20of%20Justice%29.pdf

4.

The narrative of Big Tech

The era of the tech-boom motto "move fast, break things" being a proud boast is behind us.[52] Successive scandals showed that among the things Big Tech broke were people's right to privacy, fair competition, and democratic processes. Now it's time to "reset the political narrative", as Google's lobbying strategy, leaked in autumn 2020, made clear .[53] In this memo, Google detailed, how to influence the discussions around the Digital Services Act (DSA), the tech giant wanted to push for new narratives that focused less on the company itself and more on the alleged 'unintended impact' of well-meaning regulatory policies.

Such narratives are meant to influence the regulatory debate in Brussels. Through them, lobbying gains strength. Successfully set narratives are powerful and are therefore not left to chance, as the Google lobby leak impressively shows (see more in Chapter 5).

Photo: Mark Zuckerberg – Move Fast and Break Things (cropped) by Mike Deerkoski, Wikimedia, CC BY 2.

Facebook's CEO Mark Zuckerberg, here onstage at Facebook's F8 conference in 2014, coined the famous motto "Move fast and break things". The motto has since been revised to "Move fast with stable infrastructure".

52 https://hbr.org/2019/01/the-era-of-move-fast-and-break-things-is-over

53 https://corporateeurope.org/en/2020/12/big-tech-brings-out-big-guns-fight-future-eu-tech-regulation

Repetition plays a central role in this communication strategy. The same narratives are repeated on countless occasions – irrespective of the specific topics and the concrete form or criticism of individual pieces of legislation. It is all about setting the tone of the debate.

Three narratives stand out:

BIG TECH IS 'IRREPLACEABLE' WHEN IT COMES TO SOLVING PROBLEMS

Big Tech would prefer to dictate for itself how the industry can be regulated. As Facebook confidently puts it: policy-makers act too slow. Therefore, "Facebook is not waiting for regulation".[54] Digital platforms have realised they can no longer fundamentally prevent stricter laws. Thus, they want to have as much say and influence as possible over what is in those laws.

In doing so, they often try to steer the debate towards individual technical aspects, distract from the big picture and this way limit wider policies that could actually solve the problems but have the potential to affect the companies' business model. When Google's Chief Executive Sundar Pichai, for example, speaks out in favour of restricting facial recognition,[55] he is only addressing a small part of the problem and the debate. The question of how we must regulate AI goes far beyond the handling of facial recognition, which is only one of many technologies for identifying people. When it comes to regulating AI overall, Pichai supports the intent but warned regulators to tread carefully[56]. Google is trying to distract from further regulations by focusing on one isolated aspect in an attempt to distract policy-makers from tackling the wider issues around artificial intelligence.

Realising that regulation is inevitable, the big platforms now attempt to shape the laws to their benefit

'WE'RE JUST DEFENDING SMES AND CONSUMERS'

Big Tech is trying to convince us that their concerns about regulation are not about themselves but about protecting the interests of SMEs and consumers. Big Tech companies portray themselves as generous, hide their real interests, and emphasise the potential negative impact of regulation on SMEs and consumers.

One example is Google's September 2020 campaign with the HDE trade association in Germany.[57] Here Google cleverly portrays itself as a selfless helper of small and medium

54 https://about.fb.com/regulations/
55 https://www.reuters.com/article/us-google-eu-idUSKBN1ZJ18O
56 https://www.reuters.com/article/us-google-eu-idUSKBN1ZJ18O
57 https://about.google/intl/de_ZZ/stories/googlehde/

Photo: Google Zukunftswerkstatt/Screenshot (10.8.2021) https://grow.google/intl/de/retail-support

"Together we support the retail industry. With digital opportunities that strenghten local shops." – Google portraying itself as a supporter of small businesses in a campaign with German trade association HDE.

businesses, consumers and society as a whole: "For our cities and diversity". This is intended to give the impression that regulations, like the Digital Services Act package, do not primarily negatively affect Google but rather, the greatest impact will be on SMEs and consumers. In this case, regulation is even presented as a threat to the vitality of city centres. Big Tech thus tries to distract from the fact that it's own power is a problem and needs to be regulated.

These arguments play a particularly important role in the debates surrounding the DMA and DSA. A report[58] by the think tank ECIPE and paid for by Google claimed that the not-yet-published Digital Services Act would lead to a loss of nearly € 85 billion of GDP in the EU. The US tech lobby group, Computer & Communications Industry Association, also published a report[59] that highlighted the supposed benefits for SMEs of big platforms. Debates hosted by think tanks paid for by Apple or Google have often focused on the impact that the proposed rules would have on SMEs.[60] Google's leaked lobby memo stated that one its main ways to "reset the political narrative" was to push the narrative that the "DSA Threatens Benefits for Consumers and Businesses".

FEAR OF CHINA

Big Tech's toolbox of useful arguments also exploits the fear of China and Chinese corporations.[61] The warning is that too much regulation will cause Europe to fall behind the United States and, above all, China. The narrative goes that either Europe wins

58 https://ecipe.org/wp-content/uploads/2020/10/ECI_20_OccPaper_07_2020_Ex-ante_Regulations_LY06.pdf

59 https://www.ccianet.org/2020/11/oxford-economics-presents-study-on-digital-services-in-the-eu-offers-recommendations-for-upcoming-digital-services-act/

60 For example, Apple paid for the European Policy Centre's debate titled "How will the Digital Markets Act impact SMEs' ability to grow and innovate?" https://www.epc.eu/en/past-events/How-will-the-Digital-Markets-Act-impact-SMEs~3e2a10 ; Google paid the European Policy Centre's debate "How will the Digital Markets Act impact SMEs' ability to grow and innovate?" https://epc.eu/en/events/Digital-Markets-Act-Addressing-obstacles-to~406a3c; and the "Martens Centre's debate "Is the Digital Markets Act giving the European Economy and Consumers what they need right now?" https://www.martenscentre.eu/event/is-the-digital-markets-act-giving-the-european-economy-and-consumers-what-they-need-right-now/

61 https://twitter.com/KlyngeC/status/1404081151812198401

the tech race against China, or it falls back into the Stone Age. This view reduces the question of regulation to geopolitical issues alone. From this perspective, the EU's AI transparency requirements, for example, are "very harmful to Europe", as the former Google CEO Eric Schmidt proclaimed.[62] A discussion on whether a 'race' with China makes any sense at all, and what the interests of EU citizens are, is thus made more difficult.

The corporate sector in general has been fundamentally challenging regulation for years, and Big Tech has played an important role here. This attitude is reflected in the simple cliché that "regulation stifles innovation". Behind it lies a problematic understanding of politics: state action favouring public interest is devalued. Instead, corporate interests are presented as central for the well-being of society. Companies' one-sided lobbying is thus legitimised, and every regulatory project is put under particular pressure to justify itself.

The narratives above are often used in conjunction, as exemplified by a text from Facebook's Global Head of Corporate Communications Nick Clegg on regulatory issues, which he published at the end of May 2021. In it Clegg argues that "Facebook has been publicly advocating for regulation in a number of areas for some time now", but then stirs up fear of the Chinese market, saying the "Chinese model [...] presents a risk to the open internet as we know it", and warns that "policymakers need to avoid two unintended consequences: unnecessarily stifling European innovation, and inadvertently accelerating the splintering of the global internet".[63] Here we have the narratives all united.

Big Tech's narratives

"The Chinese model [...] presents a risk to the open internet as we know it. [...] As they debate and amend legislation, policymakers need to avoid two unintended consequences: unnecessarily stifling European innovation, and inadvertently accelerating the splintering of the global internet."

Nick Clegg,
Facebook's Global Head of Corporate Communications

62 https://www.politico.eu/article/ex-google-chief-eric-schmidt-european-tech-not-big-enough-to-compete-with-china-alone/

63 'The next two years will define the next 20 for Europe's internet economy.' https://nickclegg.medium.com/the-next-two-years-will-define-the-next-20-for-europes-internet-economy-8e02da6754da

Nick Clegg not coincidentally fails to mention that Facebook's regulatory proposals really only started after the Cambridge Analytica revelations[64]. Since then, Facebook became the target of criticism for regulators. A UK Parliament inquiry, for instance, found further problems with how Facebook handled users' data and possible competitors. The inquiry concluded that regulation of the sector was needed so that firms like Facebook would "not be allowed to behave like ' digital gangsters' in the online world, considering themselves to be ahead of and beyond the law".[65] Since then, Facebook's public reputation has taken many blows and the firm has changed its public message to becoming a part of the solutions[66]. However, their 'solutions' often remain at the level of self-regulation while actively pushing back against mandatory regulation[67].

Policy-makers, journalists, and civil society should take into account how Big Tech is trying to frame these much-needed debates on regulation. The extent to which they have an impact is hard to measure. However, given the clear conflict between what's in the public interest and what's in Big Tech's interest, on everything from data privacy to disinformation to breaking up monopolies, policy-makers need to be all the more attentive and question these lobbying narratives.

BIG TECH AND THE ROLE OF LAW AND ECONOMIC FIRMS

Increasingly, large digital platforms need to defend their power against antitrust charges. Beyond new regulatory proposals, the European Commission had already fined Google three different times for antitrust breaches including abusing its dominance as a search engine to give preference to its own services, forcing Android devices to use Google's search engine, and for abusing its dominant position to prevent third parties from accepting adverts from Google's rivals.[68] Currently, DG Competition is also investigating Facebook's dual role as social network and online advertiser[69] and Amazon for using data generated by independent sellers to benefit its own products and for self-preferencing[70].

For a long time the EU Commission led the antitrust charge but this has now become a worldwide phenomena. In the past year, Australia tried to block Google's acquisition

64 https://www.theguardian.com/news/2018/mar/17/cambridge-analytica-facebook-influence-us-election

65 https://publications.parliament.uk/pa/cm201719/cmselect/cmcumeds/1791/1791.pdf

66 Minutes from lobby meetings between the EU Commission and Facebook before 2018 show how the company's main message was that it did not need regulation. https://www.politico.eu/article/inside-story-facebook-fight-against-european-regulation/

67 See Facebook's submission to the Irish Government regarding the Digital Markets Act: "As a general rule, Facebook is convinced that automatic, self-executing rules that are applicable to all companies and irrespective of the market realities in which they operate will lead to unintended, disproportionate, and damaging consequences." – https://enterprise.gov.ie/en/Consultations/Consultations-files/Facebook-DMA-Submission.pdf

68 he case files brought against Google can be found – Google Shopping – https://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=1_39740; Android – https://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=1_40099; Google AdSense – https://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=1_40411

69 https://ec.europa.eu/commission/presscorner/detail/en/ip_21_2848

70 https://ec.europa.eu/commission/presscorner/detail/en/ip_20_2077

of Fitbit[71], the UK created a new competition watchdog that specifically targets Big Tech firms[72], U.S. federal government and states hit Facebook and Google with a series of lawsuits[73] and President Biden has signed a competition order that focuses on Big Tech, among other key sectors[74].

In such cases, Big Tech firms rely on a set of specialised law and economics firms that provide them with favourable economic arguments and studies.[75] These firms support large corporations in arguing that additional mergers are not harming consumers or that their business behaviour is not abusive. However, firms like Cleary Gottlieb or Compass Lexecon, are doing more than just offering economic and legal advice. They also engage in policy discussions around antitrust law and the regulation of corporations. In Brussels and EU member states these firms have been active in ongoing policy processes around new rules for digital gatekeepers like the Digital Markets Act (DMA).

Their activities raise a number of issues: first of all, it is often unclear what interests law and economics firms represent in policy debates. Most of them don't appear in the EU Transparency Register. Secondly, they are allowed to play an expert role often without disclosing any potential biases or even conflicts of interest that can arise from contracts with specific clients and interests. Linked to this, there are questions of access to decision-makers and revolving doors between these defenders of corporate power and public authorities like DG Competition, the EU's central antitrust authority.

Let us look at two examples: Compass Lexecon is a global economic consultancy firm with headquarters in the US. It is a subsidiary of FTI Consulting, one of the leading professional lobby consultancies in the EU. Among other clients, it has worked for Google and Qualcomm, two of the top ten digital industry firms according to their lobby budget. In the Qualcomm case, one of the advisors has been Miguel de la Mano who worked for DG Competition for several years before joining Compass Lexecon. According to his CV, he had already been working on a Qualcomm case during his time at DG Competition.[76]

In recent months, Compass Lexecon has been quite active in the policy debate over the DMA and new regulations for digital platforms. In April 2021 the firm co-organised a panel on the DMA involving a representative from DG Competition, Miguel de la Mano from Compass Lexecon and two speakers from Oxera (see below) and the law and economics firm Skadden.[77] In May 2021 Compass Lexecon published a study commis-

71 https://www.accc.gov.au/public-registers/mergers-registers/public-informal-merger-reviews/google-llc-proposed-acquisition-of-fitbit-inc

72 https://www.gov.uk/government/news/new-competition-regime-for-tech-giants-to-give-consumers-more-choice-and-control-over-their-data-and-ensure-businesses-are-fairly-treated

73 https://www.reuters.com/technology/big-tech-wins-two-battles-fight-with-us-antitrust-enforcers-2021-06-29/

74 https://www.whitehouse.gov/briefing-room/statements-releases/2021/07/09/fact-sheet-executive-order-on-promoting-competition-in-the-american-economy/

75 A general critique can be found in Jesse Eisinger and Justin Elliott: 'These Professors Make More Than a Thousand Bucks an Hour Peddling Mega-Mergers'. ProPublica, 16.11.2016, https://www.propublica.org/article/these-professors-make-more-than-thousand-bucks-hour-peddling-mega-mergers

76 https://www.compasslexecon.com/wp-content/uploads/2021/04/Miguel-De-La-Mano-CV-20.04.21.pdf

77 https://www.compasslexecon.com/the-dma-a-radical-change-in-the-eu/

sioned by Google that criticized the DMA.[78] The next day a Compass Lexecon speaker presented their critique during a European Policy Centre event, sponsored by Google.[79] It included MEP Timo Wölken and a Portuguese member of the Council Working Party on Competition, the two EU institutions scrutinising the DMA proposal at that time. This shows how Compass Lexecon is deeply involved in lobbying activities of Big Tech. It does not only provide expertise, but also aids lobbying pushes at policy events. Despite this, Compass Lexecon is not registered in the EU's Transparency Register.[80]

Meanwhile, Oxera is an economics and finance consultancy.[81] It was recently involved in a revolving door case with Stéphane Dewulf, who joined the firm in September 2020 from DG Competition where he had worked as a case-handler for six years.[82] Philip Lowe, another partner in the firm, is a former Director-General at DG Competition[83]. Oxera is quite active in the debates around new rules for digital platforms. For instance, it has published studies on the DMA on behalf of Amazon[84] and the industry association CCIA,[85] it has co-organised policy events on regulating the digital sector,[86] and even submitted its own statement to the DSA consultation of the Commission.[87] Oxera is not registered in the EU Transparency Register but does appear as a small client of the public affairs consultancy Afore Consulting[88].

These examples show how some law and economics firms are actively involved in lobbying on tech regulation. When acting on behalf of their clients, they should be seen as interest representatives of the digital industry, not as neutral experts. In all cases, whenever participating in a policy discussion such experts should disclose if they have had ties with the affected companies. If they are involved in communications with decision-makers and policy events, they should register in the EU's Transparency Register and disclose their clients who are providing the money for these activities.

EU institution representatives should not participate in events by law and economics firms unless there is full transparency of the interests these firms represent. All in all, it is clear that the apparatus of Big Tech corporations to defend their power includes law and economics firms. There is certainly further need to investigate how the field of antitrust debate is itself influenced by the power and influence strategies of big corporations with the help of law and economic firms.

78 https://www.compasslexecon.com/the-proposed-dma-back-to-the-form-based-future/

79 https://epc.eu/en/events/Digital-Markets-Act-Addressing-obstacles-to~406a3c

80 Unfortunately Compass Lexecon has not responded to LobbyControl's request on its work on the DMA.

81 Like Compass Lexecon, Oxera has not responded to several requests on its work on the DSA and the DMA and collaboration with Google.

82 https://www.oxera.com/people/stephane-dewulf/

83 https://www.oxera.com/people/philip-lowe/

84 https://www.oxera.com/insights/reports/the-digital-markets-act-and-incentives-to-innovate/

85 https://www.oxera.com/about-us/media-centre/the-dma-risks-over-enforcement-by-restricting-business-practices-that-have-benefits-for-society/

86 https://www.concurrences.com/en/conferences/digital-and-competition-2-keynote-speech-by-thierry-breton-tipping-should

87 https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12418-Digital-Services-Act-package-ex-ante-regulatory-instrument-of-very-large-online-platforms-acting-as-gatekeepers/F535678

88 Information taken from the EU Transparency Register 28 July 2021 https://ec.europa.eu/transparencyregister/public/consultation/displaylobbyist.do?id=03013154889-05

5.

Big Tech's public image and think tank network

Most of the big digital platforms do not have their headquarters in the EU. They mostly come from the United States, or China. Companies like Google, Facebook, and Huawei have close ties to the US or the Chinese Government. In Europe, on the other hand, these companies have gone from being bold outsiders to household names, working hard to build up relationships with member state governments and EU institutions.

Digital platforms especially face a major challenge. The business model of large digital platforms is rather shaky and often based on pushing the boundaries of what is acceptable. Therefore, these companies need a good public image, because if not, they know that regulation follows and the business model may collapse.

Moreover, traditional media publishers, especially newspapers and TV stations in Europe, which so far have played a huge role in shaping public opinion, see Big Tech as a threat to their own business model, as large proportions of the online advertising market have been captured by Google and Facebook. An appeasement policy towards

Photo: iQoncept/Shutterstock.com

The tech companies have gained significant economic power. Now they are working on their public image to secure their status.

the traditional media sector via sponsorships[89] and PR work in general are therefore at the core of Big Tech's lobbying efforts.

Well aware of these challenges, Big Tech has helped fund a widespread European network of think tanks to amplify its narrative and influence public opinion in the EU. There are 14 think tanks and other policy groups with close ties to Big Tech. Together they declare an overall lobby budget of € 2.29 million, though only parts of the budget are related to issues relevant to the digital industry.

AN EU WIDE, HIDDEN NETWORK

Think tanks are private bodies that stand at the cross-section between research, policy debate, and lobbying. Practice and ethics in these vary widely and there are largely no controls of their activity. Think tanks are often a component of the lobbying strategies of big companies as they can influence new regulations by publishing studies and position papers, creating the useful impression of objectivity and impartial scholarship, whilst helping to shape the policy environment. Think tanks also organise discussion forums with policy-makers, which generate interesting lobbying opportunities with high-level access to government and EU officials.

Think tanks can help amplify narratives and influence public opinion, yet their close ties to Big Tech often remain invisible.

This network of EU level think tanks funded by tech firms was quite opaque for some time until Corporate Europe Observatory and LobbyControl[90] put on the pressure in 2020 to disclose it. Since then, Google, Amazon, Apple, and Facebook have updated their lobby register entries and published their ties to these think tanks. However, as we will see below, we still don't have a complete picture of this network.

But let's first take a look at what has been disclosed already.

If you look at the top ten digital industry companies, US American tech giants tend to rely far more on think tanks in their lobbying than for instance their counterparts in China. Whereas Google for example is connected to 19 think tanks in the EU, Huawei (number 5 in the ranking in terms of lobby spending) declares only 3 in the Transparency Register. You could even say that it is the largest digital platforms from the US – with the exception of Amazon – that tend to work with a larger number of think tanks.[91]

While Amazon appears at least publicly not to rely to the same extent on the collaboration with think tanks, there are good reasons to doubt this. Amazon declares to be

89 https://en.ejo.ch/digital-news/the-publishers-patron

90 https://www.lobbycontrol.de/2020/06/google-und-die-denkfabriken-transparenz-mangelhaft/ and https://corporateeurope.org/en/2020/09/big-tech-lobbying

91 Also, smaller platforms from the California, United States, like Airbnb (CEPS, CERRE) and Uber (CEPS) have ties to think tanks. But the scale is much smaller than in the case of GAFAM. Compare lobbyfacts.eu, last checked on 18 June 2021.

affiliated to three think tanks only, the Center on Regulation in Europe (CERRE), the European Policy Centre (EPC) and the Centre for Information Policy Leadership (CIPL). However, we know that Amazon has links to further think tanks, for instance to the Center for Data Innovation (CDI). CDI's work is based upon the funding of Information Technology & Innovation Foundation (ITIF), which lists Amazon as a supporter.[92] Amazon does not disclose this in the EU lobby register as it should.

BIG TECH'S LOBBY NETWORK REMAINS OPAQUE

Amazon's opacity over its think tank relationships hints at Big Tech's transparency problem. Amazon, Google, Apple, and Facebook only disclose their affiliations with other lobby organisations if they are publicly pressured to do so. We know from US data that Big Tech have close links to a widespread lobby network.[93] In 2020, LobbyControl pressured Google to disclose its ties to other lobby organisations in the EU. It did so, but only partly, as further research suggests[94].

"Okay Google, who do you fund?" – LobbyControl pressured the corporation to disclose its lobbying network in the EU with an open letter to Google's CEO and top EU lobbyist in 2020.

This is not only the case with Google. The think tank Centre for Information Policy Leadership (CIPL) for example, lists Google, Amazon, Facebook, Apple, Microsoft, Huawei, IBM, Qualcomm, and Vodafone as "members and project participants". So all top ten digital industry companies except for Intel are linked to CIPL. Yet, Apple, Microsoft, Huawei, IBM, Qualcomm and Vodafone do not disclose this relationship in their lobby declarations.

Think tanks funded by Big Tech are active in influencing the public debate around policy discussions like the DSA/DMA. They submit opinions to public consultations, prepare position papers that are then sent to MEPs and other policy-makers, host debates skewed towards their funders' interests, and even organise networking sessions on behalf of their funders.

In May 2021, the European Policy Center (EPC) for instance hosted an online round-table to discuss the Digital Markets Act proposal and its potential impact on SMEs. The event was organised in partnership with Apple[95]. Speakers included Allied for Startups, an organisation funded by companies like Apple, Google, Facebook, among others; ACT, the App Association, also funded by Apple and Microsoft[96]; the

92 https://itif.org/our-supporters

93 Google, for instance, has published a list of its lobby affiliations in the US. https://services.google.com/fh/files/misc/trade_association_and_third_party_groups.pdf

94 https://www.lobbycontrol.de/2020/11/mit-harten-bandagen-wie-google-strengere-regeln-fuer-internetplattformen-verhindern-will/

95 https://www.epc.eu/en/past-events/How-will-the-Digital-Markets-Act-impact-SMEs~3e2a10

96 https://actonline.org/about/

consultancy Copenhagen Economics; and finally an MEP who is also President of SME Europe, the "independent political network of Christian-Democrat and Conservative political and pro-business organization"[97].

This discussion was held under Chatham House Rule. This means participants are free to use the information received, but neither the identity nor the affiliation of the speaker(s), nor that of any other participant, may be revealed. Corporate Europe Observatory tried to attend the online discussion but was told that "due to overwhelming interest, this event (like all EPC events) is closed to members only"[98].

Since then the EPC has hosted a policy dialogue, paid for by Google, to discuss the "Digital Markets Act: Addressing obstacles to growth and innovation for a strong EU recovery post-Covid 19"[99]. This, at least, was public. Corporate Europe Observatory asked the EPC what type of involvement Google had had in this event but the EPC did not respond[100].

GOOGLE'S INFAMOUS LOBBY LEAK

We have more insights into Big Tech lobbying from a Google lobby strategy paper on the DSA/DMA leaked in October 2020[101]. There is a lot to say on this, but what one clearly sees from the leak is that the collaboration with think tanks is a key part of the strategy to influence the new regulation of digital platforms. The document lays out in black and white the strategy the company is deploying to fight regulation. A number of think tank publications on the DSA and DMA are mentioned in the strategy document as key moments of lobbying.

A leaked lobby strategy showed black on white how Google pushed back against regulation.

These publications are not only funded by Big Tech, they sometimes also show a strong bias towards the interests of Big Tech. Take for instance a report by the European Center for International Political Economy (ECIPE) sponsored by Google[102]. The think tank published a study that estimated the economic cost of the (at the time yet unknown and unpublished) proposals at about € 85 billion to the European economy. Tommaso Valetti, the former Chief Competition Economist of the Commission analysed the report and called it "ridiculous"[103].

97 https://www.smeeurope.eu/wp-content/uploads/2019/02/201811_SME-EUROPE-STATUTES-by-law.pdf

98 https://corporateeurope.org/sites/default/files/2021-07/How%20will%20the%20Digital%20Markets%20Act%20impact%20SMEs%E2%80%99%20ability%20to%20grow%20and%20innovate_0.pdf

99 https://www.epc.eu/en/events/Digital-Markets-Act-Addressing-obstacles-to-growt~406a3c

100 https://corporateeurope.org/sites/default/files/2021-07/Question%20regarding%20Digital%20Markets%20Act%20-%20Addressing%20obstacles%20to%20growth%20%26%20innovation%20for%20a%20strong%20EU%20recovery.pdf

101 https://corporateeurope.org/en/2020/12/big-tech-brings-out-big-guns-fight-future-eu-tech-regulation

102 Economic Costs of Ex ante Regulation ECIPE https://ecipe.org/publications/ex-ante/

103 https://twitter.com/TomValletti/status/1322204719033536515 and https://www.lobbycontrol.de/2020/11/mit-harten-bandagen-wie-google-strengere-regeln-fuer-internetplattformen-verhindern-will/

DIGITAL INDUSTRY: FUNDING THINK TANKS AND NGOS

	GOOGLE	FACEBOOK	MICRO-SOFT	APPLE	HUAWEI	AMAZON	IBM	INTEL	QUAL-COMM	VODAFONE
CERRE	✓	✓	✓	✓	✓	✓	✗	✗	✓	✓
CDI	✓	✓	✗	✗	✗	✗	✗	✗	✗	✗
EPC	✓	✓	✗	✓	✗	✓	✗	✗	✗	✓
CEPS	✓	✓	✓	✓	✗	✗	✗	✗	✗	✗
CER	✗	✗	✓	✓	✗	✗	✗	✗	✓	✓
Bruegel	✓	✓	✓	✓	✓	✗	✗	✗	✗	✓
Lisbon Council	✓	✓	✗	✓	✗	✗	✗	✗	✗	✗
Center for Democracy and Technology (CDT)	✓	✓	✗	✗	✗	✗	✗	✗	✗	✗
Transatlantic Policy Network (TPN)	✓	✓	✓	✓	✗	✗	✓	✗	✗	✗
Friends of Europe	✓	✓	✓	✗	✗	✗	✗	✗	✗	✓
ECIPE	✓	✗	✓	✗	✗	✗	✗	✗	✗	✗
European Youth Forum	✓	✓	✓	✗	✗	✗	✗	✗	✗	✗
German Marshall Fund	✓	✗	✓	✗	✗	✗	✗	✗	✗	✗
Wilfried Martens Centre for European Studies	✓	✗	✓	✗	✗	✗	✗	✗	✗	✗

KEY THINK TANKS IN BIG TECH'S LOBBY NETWORK

According to membership declared by the top ten digital industry companies, the four policy groups with most links to those companies are the Centre on Regulation in Europe (CERRE), Bruegel, the Transatlantic Policy Network (TPN), and the European Policy Centre (EPC).

The funded think tanks are not all necessarily representing the interests of Big Tech towards policy-makers via private meetings. Take for instance Bruegel, that provides a relatively moderate analysis of the Digital Markets Act (DMA) in its blog and even

asks for more ambitious forms of competition policy, such as stricter merger controls.[104] And indeed the Centre on Regulation in Europe (CERRE) with eight out of the top ten digital industry companies linked to it, provides a rather balanced study on the DMA.[105] There may be no direct link to the agenda of Big Tech. But nevertheless, it remains a problem when key EU think tanks rely on digital industry funding and at the same time cover key legislation that affects the industry. The conflicts of interest due to funding can be subtle but have an effect on a think tank's coverage of legislation in the medium-term.

On the other hand, there are think tanks in the EU that do seem to represent the interests of Big Tech outright, such as the dubious ECIPE study mentioned above. The Center for Data Innovation is another interesting case. CDI did not disclose any of its funders for a long time. It also failed to provide any information about who financed them. Only after Corporate Europe Observatory and Lobbycontrol publicly questioned the relationship between CDI – and it's associated Information & Technology & Innovation Foundation (ITIF) – to Big Tech firms did the think tank finally list its funders; unsurprisingly, the majority are companies and their lobby groups, including Amazon, Apple, Facebook, Google, and Microsoft[106]. The think tank's transparency is still lacking, as its website does not list its funders and they are also not acknowledged in the policy papers it publishes and shares with policy-makers.

CONFLICTS OF INTEREST AROUND THE EUROPEAN PEOPLE'S PARTY (EPP)

One problematic revolving door case regarding think tanks is that of Eline Chivot, former representative of CDI, who has been hired by the European Conservative Party EPP as Senior Adviser on digital policy[107]. This revolving door case is concerning as the EPP is the leading group in the European Parliament, and its own German member Andreas Schwab (CDU) is the rapporteur for the DMA.

There is another potential tech connection to the EPP. The Wilfried Martens Centre, the think tank affiliated to the EPP, receives funding from Google[108]. The usefulness of such funding could perhaps be seen in the Centre's November debate on whether the DMA was "giving the European economy and consumers what they need right now" which was "powered by Google". Despite the title, the debate didn't feature a representative from a consumer organisation. Instead it gave a forum to the above-mentioned

104 Regulation Big Tech: the Digital Markets Act. Last time checked on 14 June 2021. https://www.bruegel.org/2021/02/regulating-big-tech-the-digital-markets-act/

105 https://cerre.eu/publications/the-european-proposal-for-a-digital-markets-act-a-first-assessment/

106 https://itif.org/our-supporters

107 https://www.epp.eu/people

108 Information retrieved from Lobbyfacts 28 July 2021 https://lobbyfacts.eu/representative/1d40cdaf822941888d1e6121858bb617/google

Eline Chivot, at that time still representative of the Center for Data Innovation, and the author of ECIPE's misleading report on the DMA sponsored by Google[109].

Big Tech has close ties to various think tanks, but these ties are often still unclear. This is a problem as it allows companies to create the impression that their interests are supported by seemingly independent advocates, making it easier for them to influence the political conversation in their own interests. On the flip-side, this situation makes it harder to scrutinise how these big companies exert influence.

SME AND STARTUPS ALLIANCES FINANCED BY BIG TECH FIRMS

Big Tech lobbyists use the idea of being an "innovator for society" in their narratives to counter new regulations. This approach, described in more detail in Chapter 4, is useful for Google and others to persuade the public and policy-makers over to their side in the battle against new rules for digital platforms. However, companies in the tech sector that drive innovation tend to be startups or SMEs. Big Tech companies like Google or Apple rather buy up those companies to avoid them as competitors and to assimilate their innovation capacities. In the field of artificial intelligence for instance, Big Tech companies have been aggressively acquiring startups over the last decade: Apple made 20 AI acquisitions, Google 14 and Microsoft 10.[110]

In the EU there are a number of associations ostensibly representing the interests of startups and small and medium sized enterprises (SMEs), but that are funded by Big Tech and whose lobbying is in line with the interests of large digital platforms. SME Connect and Allied for Startups are two good examples.

SME Connect's members include digital platforms such as Facebook, Google, Amazon, and Uber. The association describes itself as a platform that brings together policy-makers and SMEs as well as larger companies under the banner of 'friends of SMEs'". In this context, SME Connect has brought together policy-makers and business lobbyists in various panels both on the DMA[111] and the DSA.[112]

Allied for Startups is funded by Google, Facebook, Amazon, and Apple, and Pinterest.[113] Allied for Startups has had a joint project on the DSA with Oxera, a law and economics firm that also has Google as a regular client. Despite various reminders, neither Allied

109 https://www.martenscentre.eu/wp-content/uploads/2020/11/Is-the-Digital-Markets-Act-giving-the-European-Economy-and-Consumers-what-they-need-right-now-DRAFT-PROGRAMME.pdf

110 https://www.cnbc.com/2019/09/23/why-apple-google-are-snatching-up-start-ups-to-fuel-innovation.html

111 https://www.smeeurope.eu/gatekeeper-rules-for-digital-platforms-and-their-impact-on-smes/

112 https://www.smeeurope.eu/how-can-we-make-the-digital-services-act-work-for-smes/

113 https://alliedforstartups.org/about-us/

for Startups nor Oxera have to date responded to a request by LobbyControl to explain their relationship with Google.

All in all, Allied for Startups' position on the DSA is rather in line with the interests of the big digital platforms, arguing for a self-regulatory approach[114] and a moderate regulation of platforms.[115] With respect to the DMA, Allied for Startups argues that startups need the big platforms in order to become giants themselves and "to reach out easily to consumers".[116]

Quite revealing is that Google mentions the DSA work of Allied for Startups in its leaked lobby strategy document.[117]

Yet Big Tech is rather reluctant to disclose its relationship to associations like SME Connect and Allied for Startups. It was only after public pressure that Google, Facebook etc started to be more transparent about their ties to these SME associations. Similarly Allied for Startups has maintained its silence and never responded to our requests on the nature of their collaboration with Google.

Moreover, these associations are keen to highlight the supposed alignment of the interests of startups, SMEs, and Big Tech. There is no hint of criticism of the Big Tech firms here, in spite of huge amounts of SMEs are either driven out of the market, or are subjected to unfair practices by platforms such as Amazon Market Place[118] or the Apple App Store charging a 30 percent tax on in-app purchases.[119] Or else, as mentioned above, they are simply gobbled up by Big Tech.

Funding such associations helps Big Tech companies look like they are on the side of SMEs, a narrative they often use in their lobbying. It also allows them to mobilise third parties to echo their messages.

Photo: KoshiroK/Shutterstock.com

The "Big 5" are dominating the digital market, pushing out large numbers of smaller competitors.

114 https://alliedforstartups.org/wp-content/uploads/2021/05/2021-AFS-Position-on-the-Digital-Services-Act.pdf
115 https://alliedforstartups.org/2021/05/27/joint-statement-to-the-27-may-competitiveness-council-on-the-digital-services-act-dsa/
116 https://alliedforstartups.org/2020/12/03/the-digital-markets-act-faq-for-startup-founders/
117 https://www.lobbycontrol.de/2020/11/mit-harten-bandagen-wie-google-strengere-regeln-fuer-internetplattformen-verhindern-will/
118 https://www.bbc.com/news/business-54887650
119 https://www.wsj.com/articles/apple-under-antitrust-scrutiny-halves-app-store-fee-for-smaller-developers-11605697203

6.

Conclusion: time to limit the digital industry's power

In this report, we have seen the immense lobby firepower of the digital industry and especially that of large digital platforms like Google, Amazon, and Facebook. The firepower reflects the sector's increasing dominance in the economy and in society as a whole. Its non-transparent collaboration with think tanks, law and economic firms, and the industry's attempt to depict itself as startup-friendly, are all attempts to disguise Big Tech's real interest to avoid future regulations.

Ten years ago, the picture of EU lobbying was different with sectors like finance or pharma dominating it. But this has changed over the last decade with Big Tech overtaking them in terms of spending, reach, and influence. But it is not just Big Tech's lobby firepower that is a problem: its business models threaten to undermine democratic decision-making in our societies. The huge concentration of economic and lobby power is poison to our democracy. This is why we need better rules to limit the lobbying of the digital industry and to make it more transparent (see recommendations below).

But we also need more than that to preserve the functioning of our democracy. The firms' political power is intimately linked to their business models and their market power.

The Digital Markets Act and the Digital Services Act are a political opportunity to limit the power of large digital platforms. But much more is needed to make them effective: the Digital Services Act needs to include rules that effectively stop surveillance for profit; tame Big Tech's recommender systems and algorithms that amplify hate speech and disinformation; and, finally, make sure that Big Tech doesn't circumvent these rules.

But we need also to address the gigantic economic power concentration in the sector. With the emphasis on behavioural rules in the Digital Markets Act, the EU is thus far missing an opportunity to go further and to create new structural instruments to break up the all-too-powerful corporations in the digital sector. These new instruments are urgently needed.

It is is also time to update the old instruments, in particular merger control. So far, killer acquisitions such as the Google/Fitbit merger[120] – which offers the tech giant even more data dominance – have not been stopped with current rules in place. The Commission has not taken the chance to do this via the DMA. It could still do so with the support of the European Parliament.

All in all, the alarming power of the digital sector should be a wake-up call to put in place stricter lobby regulation both at the EU and member state levels, and to make sure new instruments are created to limit the power of corporations that otherwise will use it to shape legislation according to their interests.

OUR PROGRAMME TO LIMIT THE POWER OF BIG TECH:

- Effective lobby transparency without loopholes, including a much stronger and better equipped Transparency Register;
- Proper funding transparency requirements for think tanks and other organisations to reveal their funding sources;
- Block the revolving door between EU institutions and Big Tech firms by strengthening revolving door rules and setting up an independent ethics committee that is able to launch investigations and implement sanctions;
- More transparency and democratic accountability at member state level and Council;
- Ensure a balance between the stakeholders heard, this could include limiting of lobby meetings as soon as there is imbalance both at Commission and EP level;
- EU officials and policy-makers should proactively seek out the voices of those that have less resources: SMEs, independent academics, civil society groups, local groups.
- EU officials and policy-makers should be sceptical of those lobbying them: question their funding sources, check their sources, denounce any type of wrongdoing/ non-transparent / unethical lobbying they face.
- EU officials and policy-makers should not attend or participate in events or debates that are closed to the public, held under Chatham House rules, or that do not disclose their sponsorship.

120 https://www.politico.eu/article/europe-must-not-rush-google-fitbit-deal-data-privacy/

- Experts participating in policy discussions should always disclose any potential conflicts of interest. Whenever expert organisations become involved in communication with decision-makers and policy events on behalf of clients, they should register in the EU's Transparency Register and disclose their clients who are providing the money for these activities.

- Tackle the excessive market power of Big Tech firms by strengthening obligations for gatekepeers, strengthening merger controls and develop structural instruments to break up the all too powerful digital monopolies.

- Finally address the privacy exploiting business model of digital platforms and empower users by banning surveillance based advertising and allowing users to opt out of content recommender systems/algorithms.

- Civil society also needs to act. Academia, think tanks, and NGOs that keep ties with Big Tech need to critically assess how they are functioning as part of the company's soft power and should consider cutting those ties. At the very least, all funding must be disclosed.

Efforts to regulate the digital economy have the potential to deliver a better internet, one that serves people, small businesses and communities. It is crucial that independent voices and citizens get involved with these policy discussions to ensure that lobbyists don't get to shape the future of technology.

Annex

Methodology: measuring the Digital Industry's lobby firepower

To analyse the digital industry's lobbying firepower in Europe, we used the data available in the Transparency Register of the EU. Our first step was to selected those companies in the register with a special interest in the digital economy.[121] This comprised a large number of companies from different sectors, so we defined criteria to identify the digital companies among them.

Companies are counted as part of the digital industry if they provide digital technology or services as hardware, software, telecommunication, and information services; these are firms with a "business model based on digital goods or services",[122] as for example digital platforms such as Amazon, Airbnb etc. Consultancies, banks, investment firms, and holding companies were excluded from the sample unless they have a special focus on the digital economy (eg Accenture as a major consultancy on digitalisation). In addition, publishing, radio, television, and postal companies were excluded.

As the filter function we used to search the Transparency Register may not cover all relevant actors, we compared the list with Forbes Top 100 digital companies,[123] from which we added all businesses not yet covered by the sample but recorded in the Transparency Register. The same applies for the members of important international trade associations, of the Information Technology Industry Council (ITI), and of the Business Software Alliance (BSA). On the European level, members of the major European digital business associations (DigitalEurope, dot.europe, EuroIspa, CCIA Europe, IAB Europe) were included as well, regardless of whether they are registered in the EU Transparency Register or not. In this context, we also added companies like Bayer, Bosch, and Kyocera as they have a special interests in the European digital market.[124]

121 The tags "Companies & Groups", "All levels of interest" and "Digital economy and society" were combined. The result was a list of 1277 organisations which was downloaded 12 April 2021. We repeated these steps on 20 May and 15 June 2021 to add some new registrations and update the data on lobby expenses, if necessary.

122 Bukht, Rumana/ Heeks, Richard (2017). Defining, Conceptualising and Measuring the Digital Economy. Manchester: Centre for Development Informatics, p. 13.

123 See https://www.forbes.com/top-digital-companies/list/, last checked 1 June 2021.

124 Altogether there are 69 companies mainly operating in other sectors in the sample. We included them in the number of actors, but we excluded them from calculating the overall lobby expenses and the number of lobbyists of the digital industry.

For the actors registered, we have used the Transparency Register data on lobby expenditures, number of lobbyists (and FTE), the head office location and the Brussels office location in case it exists. Since the lobby expenses are given in ranges, we used the lower value for the analysis. Only for the category "0-9999" the mean value was calculated. All in all, we therefore provide a conservative estimate of lobby expenses of the digital industry.[125]

At this point, we would like to point to a number of deficits of this data. First of all, it is information declared by the companies themselves, with very few checks done to ensure its accuracy. Secondly, the data remains incomplete, as often lobbying of member state governments on EU issues is not included. Thirdly, the data is only updated once a year, so sometimes it is one or two years old. Despite these deficits, we think it is the best data available, its quality has been improving in recent years and already provides a good glimpse into the world of EU lobbying.

125 For the supplemented 84 companies without entries in the Transparency Register, there is no information about lobby expenditures and number of lobbyists. Also there are 18 actors without information about their expenditures in the register. Accordingly, these cases are not taken into account in the corresponding calculations.

Corporate Europe Observatory (CEO) is a research and campaign group working to expose and challenge the disproportionate influence that corporations and their lobbyists exert over EU policy-making. CEO works in close alliance with public interest groups and social movements in and outside of Europe to develop alternatives to the dominance of corporate power.

www.corporateeurope.org

LobbyControl e.V. is a non-profit initiative working to inform the public about lobbying and opinion making in Germany and the EU. We shed light on the privileged influence that big corporations often enjoy and argue for a lively and transparent democracy.

www.lobbycontrol.de

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